



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# AGENDA REPORT

2019 MAY -2 PM 6: 23

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Maraskeshia Smith  
Assistant City Administrator

**SUBJECT:** SUPPLEMENTAL – Information and  
Analysis Regarding Elimination of  
Rent Ordinance for Owner-Occupied  
Duplexes and Triplexes

**DATE:** April 22, 2019

City Administrator Approval

Date:

5/2/19

## RECOMMENDATION

**Staff Recommends That The City Council Consider Adopting An Ordinance Amending (1) The Rent Adjustment Ordinance (O.M.C. 8.22.020 Et SEQ) To Eliminate Exemptions For Owner-Occupied Duplexes And Triplexes And Allow A Limited Transitional Rent Increase For Newly Covered Units And (2) The Tenant Protection Ordinance (O.M.C. 8.22.600 Et SEQ) To Eliminate Exemptions For Owner-Occupied Duplexes And Triplexes.**

## REASON FOR SUPPLEMENTAL

At the April 4, 2019 Rules and Legislation Committee meeting, Council Members received a request from Council Member Lynette Gibson McElhaney to have a series of questions addressed for the City Council review as it considers an ordinance that would eliminate exemptions for owner-occupied duplexes and triplexes. The following provides the questions asked by Council Member McElhaney (*in italics*) with staff responses below.

### **1. *Is this the right tool for the job?***

- a. *There are lots of different problem definitions that have been conflated. Based on data (or at least a thoughtful examination of anecdotes since rental data is often impossible), what is the problem definition about what we are trying to fix? Are we worried about people being constructively evicted by large rent increases? Are we worried about any rent increases at all above CPI? What?*

**Response:** At the present time, all rental units constructed prior to 1983 are covered by the Rent Adjustment Ordinance, with the exception of exempted units that currently include units located in duplexes or triplexes where one of the units is owner-occupied for at least two years. Without rent adjustment coverage, a property owner may increase the rents as they choose, and it is documented that the changes to Oakland's rental and ownership housing market has resulted in unprecedented increases. The increases to renters can result in forced displacement (whether through an eviction or not). To date, there have been several responses to this situation, as follows:

Item: \_\_\_\_\_  
CED Committee  
May 14, 2019

- The Mayor's Housing Cabinet recommended expanding protections to tenants in two and three unit buildings.
- Measure Y was passed by the voters in 2018 to provide tenants in owner-occupied duplexes and triplexes with Just Cause protections.
- The Update Report on the Mayor's Housing Cabinet cited Measure Y as a success in the effort to stem displacement of vulnerable tenants who previously did not have this legal protection.

However, while tenants in owner-occupied duplexes and triplexes now have just cause protections, without rent adjustment coverage, owners may still raise the rents as they choose. With publicly stated concerns by property owners about the impact of just cause protections on their ability to evict a tenant as they choose, there is anecdotal evidence that rent increases above the Consumer Price Index (CPI), at levels unaffordable to current tenants, are taking place resulting in economic displacement.

One tool that is ready at hand for the City to employ is the extension of rent adjustment to these units, applying the law as it currently stands for pre-1983 duplexes and triplexes where the owner does not reside and to pre-1983 properties of four units and more.

City staff's analysis of jurisdictions with rent control has not revealed alternative strategies being utilized at this time.

- b. *Are there other policy actions better suited to the problem definition than full rent stabilization? Conforming with rent control is an administrative burden that lends itself better to larger operations. I feel that a rent gouging cap works so much better (limit the increase in any one year to CPI + 5%) as it prevents rent gouging evictions without being overly burdensome. Other thoughts?*

**Response:** Rent control jurisdictions throughout the State have long established that extending rent control to owner-occupied duplexes and triplexes is the best practice. This includes San Francisco, San Jose, Los Angeles, and Berkeley. Berkeley is currently considering removing its exemption for "Golden Duplexes" (duplexes where an owner lives in one unit and where an owner lived in one unit in 1979). Staff is not aware of any other jurisdiction that applies a limited exemption or a different rent cap to owner-occupied duplexes and triplexes. As noted above, full rent adjustment coverage puts owner-occupied duplexes and triplexes on the same level as other duplexes and triplexes. Rent control also allocates rent increases more precisely by allowing owners who perform capital improvements larger increases than owners who do not.

With the Rent Adjustment Program (RAP) fee increase approved by the City Council on April 16, 2019, there will be funding to adequately staff administrative and enforcement activities so that the proposed ordinance change would not create an administrative burden on the program.

**2. What are the possible impacts and unintended consequences?**

- a. *What do we know about what happens to rental stock when this happens? Please take a look at the Stanford study that came out last year showing a dramatic reduction in rental stock after small rental buildings were brought into rent stabilization there.*

**Response:** The Stanford study by Diamond, McQuade, and Qian found that the tenants protected by rent control are 13 percent less likely to be displaced, and the anti-displacement effect is especially large for minorities. The study also found that there was a 15 percent decline in rental stock since 1994 for pre-1980 units compared with post-1990 units and attributed the decline to conversion to owner occupancy and replacement by new construction. Based on staff's current analysis, it appears that the cited Stanford study has been criticized by several academics throughout the state. One of the key flaws of the Stanford study is it did not study what it purported to study – the effect of rent control on newly covered units after San Francisco voters removed the exemption for owner-occupied two to four unit buildings. Rather, the data studied the difference between buildings built before 1980 and after 1980 without any regard as to whether the building was owner occupied and whether the effects were due to building age rather than due to the effect of rent control.

- b. *How does this proposal interact with other ordinances? For instance, our condo conversion ordinance doesn't apply to two to four unit buildings in most of Oakland. Also, due to Costa Hawkins, condos aren't rent controlled after the person who does the subdivision sells the building (City of Oakland got sued about this last year and lost).*

**Response:** The condo conversion ordinance applies to two to four unit properties but does not currently require conversion rights (replacement rental housing) for conversions of these properties. As such, if the City is concerned about the conversion of rental units into condominiums, the City Council could restrict condo conversions from smaller rental properties, including many that are not owner-occupied. With additional time, staff could recommend alternatives to address this issue, but has not found a material impact on the issue as a result of the application of rent adjustment to owner-occupied duplexes and triplexes.

- c. *How does this ordinance interact recent market changes? Specifically, although 20%ish of rent controlled units turn over each year, that's a conditional probability that declines with length of tenure. What is the risk to a duplex owner who has a below market rate tenant that stays for a long time. What about owners' claim that real costs (utilities, garbage, parcel taxes, contractor costs, cost of debt, etc.) are exceeding the statutory rent increase limit?*

**Response:** With respect to the real cost of operating a rental property (i.e. utilities, garbage, parcel taxes, and repair costs carried out by contractors), to the extent that the CPI escalation which is applied annually does not cover the real increases that

an owner experiences, the owner may pass through those costs through an increased housing costs petition.

An increase to debt service is not an allowed cost for the pass through petition described above; however, debt service generally remains stable unless the owner refinances. To the extent that an owner of a property is subject to rent adjustment, refinancing decisions could be impacted.

- d. *Can this be fixed with a fair-return application that owners can actually use? Oakland to my knowledge has never approved an owner's application for a rent raise based on a fair return claim. We have no forms, no practices, no explanations or other regulations about how an owner is supposed to make one. Owners are also claiming that the reporting requirements for capital improvement petitions are onerous. These kinds of regulations dissuade people from trying to take advantage of them (happy to share some emails I've gotten on this). Is there a process for a fair return application that isn't impossible to use that might help?*

**Response:** The Oakland's Rent Adjustment Ordinance is designed to allow owners to achieve a fair return through CPI, capital improvement, and increased housing cost petitions. RAP has created a handout on the topic of allowable rent increases which includes detailed information and instructions on a property owner's ability to file a petition on the grounds of fair return. Additionally, RAP is working on expanding outreach and education for property owners concerning their rights and responsibilities.

Owner petitions for rental increase approvals increased significantly with the passage of Measure JJ, from 11 in FY 2014-15 to 93 in FY 2017-18. In the past year, the program has heard five fair return petitions.

**3. What are the equity implications of the ordinance?**

- a. *Who are the people being regulated by this ordinance and what are their characteristics? I've got a list of folks in this situation who would be willing to share their financials. Many are struggling. Many bought duplexes because they couldn't afford single-family homes. Many struggle to make the mortgage and this could be a tipping point for them.*

**Response:** Owner-Occupied duplexes and triplexes have not been subject to rent control after the relevant period of owner occupancy (one year or two years) since the Ordinance was adopted in the 1980s, and as such staff does not have data on who these owners are. Property owners of covered rental units do have several mechanisms to pass increases on to their tenants and the proposed Ordinance change would not alter this, and as noted previously, increases to mortgage payments may not be passed through to tenants.

- a. *What is the impact on this for helping people achieve homeownership? Regardless of whether or not we can know the magnitude, what's the direction of the impact – will it lead to more homeownership of middle class folks or less?*

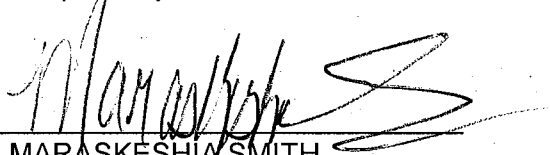
**Response:** For individuals exploring the acquisition of a duplex or triplex as a means to homeownership, the outcome of this ordinance would result in an underwriting consideration that currently does not exist. That consideration is two-fold, including both a CPI-based annual rent increase ceiling and an ability to increase rents through the increased housing services and capital improvement petition process. Staff has not conducted an impact analysis to determine whether this will induce more or less homeownership for middle class households. That said, staff has not identified this as a strategy for promoting homeownership in the past.

**ACTION REQUESTED OF CITY COUNCIL**

Staff recommends that City Council consider adopting an ordinance amending (1) the Rent Adjustment Ordinance (O.M.C. 8.22.020 Et SEQ) to eliminate exemptions for owner-occupied duplexes and triplexes and allow a limited transitional rent increase for newly covered units and (2) the Tenant Protection Ordinance (O.M.C. 8.22.600 Et SEQ) to eliminate exemptions for owner-occupied duplexes and triplexes.

For questions regarding this report, please contact Chanee Franklin Minor, Manager, Rent Adjustment Program at (510) 238-3262.

Respectfully submitted,



MARASKESHIA SMITH  
Assistant City Administrator

Reviewed by:  
Maryann Leshin, Deputy Director, HCD

Prepared by:  
Chanee Franklin Minor, Manager, Rent Adjustment Program